



Workshop at Lauterpacht Centre for International Law on the International Court of Justice’s Advisory Opinion in the case concerning the Chagos Archipelago: Summary of the workshop

On 11-12 April 2019, a workshop entitled „The International Court of Justice’s Advisory Opinion in *Chagos*” took place at the Lauterpacht Centre for International Law, University of Cambridge. The workshop was organized by Jamie Trinidad (Wolfson College, University of Cambridge) and Thomas Burri (University of St. Gallen). It served as a forum to discuss the International Court of Justice’s Advisory Opinion in the case “Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965”, which had been handed down on 25 February 2019. International law experts, practitioners, and observers were among the participants in the workshop.

The workshop began on 11 April 2019 with a *keynote lecture* on “Self-Determination and the General Assembly after the Chagos Advisory Opinion” by Dr. Stephen Allen (Queen Mary University of London). After a brief overview of the history of the case, Dr. Allen *inter alia* discussed how the Advisory Opinion of the International Court of Justice (ICJ) imbued certain General Assembly resolutions with normative quality, thereby empowering the General Assembly, although its resolutions are not normally binding. He also highlighted the trajectory of the idea of self-determination under the United Nations system and how the Advisory Opinion re-rooted self-determination as a right in the UN Charter and certain resolutions following up on it.

In the following *public discussion*, the focus was on the Chagossians and what the Advisory Opinion meant for them. Input to the discussion was provided by David Snoxell, Sebastian Schnitzenbaumer, and Thomas Burri. Although participants were not in agreement on all points, generally, the consequences of the Advisory Opinion for the Chagossians are likely to be substantial, although the ICJ merely asked the General Assembly to address the right of return of the Chagossians. After the Court had held that decolonization of Mauritius was incomplete, the effect of the Advisory

Opinion on sovereignty over the Chagos Archipelago remains unclear. Consequently, the legal regime applicable to the Chagossians and their human rights is also subject to uncertainty. Further points of discussion were: the role of the Chagossians in the coming process of decolonization; whether the Chagossians themselves had a right of self-determination; how their views were to be factored into the decisions to be taken with regard to the Chagos Archipelago; how they would partake in anything the Archipelago may provide in the future, including by reason of the US military base. Generally, a risk was acknowledged that the rights and interests of the Chagossians might not be fully taken into account, because the process following upon the delivery of the Advisory Opinion would be dominated by UN Member States.

The second day saw three roundtable discussions. The discussions in the *first roundtable*, which was chaired by Daniel-Erasmus Khan, evolved around several topics, including the change in treaty regime occasioned by the Advisory Opinion (input by Peter Sand), the Advisory Opinion's unusual way to determine a customary law right of self-determination (James Summers), the impact of the Advisory Opinion on the Lancaster House "undertakings", the law of treaties more generally, and agreements in decolonization (Mohor Fajdiga and fellow students), the relevance of the Advisory Opinion for certain parts of the Southwest Pacific, incl. West Papua (Robert McCorquodale), and the meaning of the Opinion for international law in general as well as the relatively high quality of the Advisory Opinion in contrast to the ICJ's Opinion in the *Kosovo* case (Marcelo Kohen).

The *second roundtable*, chaired by Catriona Drew, focused on technical aspects of the Advisory Opinion. Procedural issues were discussed, such as the Court's notion of discretion and whether it left room to reject requests for Advisory Opinions in the future (Zeno Crespi Reghizzi), but also further substantive issues. The relevance of the Advisory Opinion and the judges' secondary opinions for the peremptory nature of the right of self-determination was, for instance, discussed.

Lastly, the *third roundtable*, chaired by Sarah Nouwen, focused on the significance of the Advisory Opinion for other situations, such as Belize, Îles Éparses, and Mayotte (Catherine Drummond). Its relevance for Cyprus and Gibraltar was also discussed as well as the Opinion's potential to serve as a tool for re-addressing other situations that had generally been considered settled (Jamie Trinidad). Finally, it was shown (by Johannes Fahner) that the Advisory Opinion sat uneasily with the UNCLOS Annex

VII Arbitral Tribunal's Award of 2015 in *Chagos Marine Protected Area (Mauritius v. United Kingdom)*, in particular with regard to the binding character of the Lancaster House "undertakings".

Further publications are in planning, after a previous workshop at the University of St. Gallen, which had taken place before the Advisory Opinion was handed down, had produced a series of articles published in *Questions of International Law* (www.qil-qdi.org).

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Thomas Burri and Jamie Trinidad